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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION**

EPIC GAMES, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

APPLE INC.,

Counterclaimant,

v.

EPIC GAMES, INC.,

Counter-defendant.

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF J. WESLEY
 EARNHARDT IN SUPPORT OF FURTHER
 STIPULATION AND [PROPOSED] ORDER
 PERMITTING NON-PARTY DEPOSITION
 OF ADRIAN ONG OF MATCH GROUP,
 INC. AFTER THE NON-EXPERT
 DISCOVERY CUTOFF**

Hon. Yvonne Gonzalez Rogers

1 I, J. Wesley Earnhardt, declare as follows:

2 1. I am a partner at the law firm of Cravath, Swaine & Moore LLP, and I am
3 one of the attorneys representing Epic Games, Inc. (“Epic”) in the above-captioned action. I am
4 admitted to appear before this Court *pro hac vice* in *Epic Games, Inc. v. Apple Inc.*, Case No.
5 4:20-cv-05640-YGR. The contents of this declaration are based on my personal knowledge. If
6 called to be a witness, I could and would testify competently thereto.

7 2. I submit this declaration pursuant to Civil Local Rule 6-2 in support of the
8 Stipulated Request for Order Changing Time (the “Stipulation”) in this matter.

9 3. Epic timely served a document subpoena on Match Group, Inc. (“Match
10 Group”), and, upon Match Group’s identification of its designee, Adrian Ong, timely served a
11 deposition subpoena on Mr. Ong.

12 4. Epic negotiated with Match Group and secured a deposition date for
13 Mr. Ong of February 15, 2021, within the Non-Expert Discovery Cutoff fixed by the Court in its
14 October 6, 2020 Case Scheduling and Pretrial Order (the “Scheduling Order”). (Dkt. 116.)

15 5. On February 11, 2021, counsel for Match Group and Mr. Ong informed
16 Epic and Apple that Mr. Ong faced an unexpected family medical emergency and would be
17 unable to sit for the deposition on February 15, 2021 but expected that Mr. Ong would be
18 available for deposition on February 22, 2021.

19 6. On February 12, 2021, my office requested that Apple stipulate to an
20 extension of the Non-Expert Discovery Cutoff to permit the deposition of Mr. Ong on
21 February 22, 2021, and, on February 13, 2021, Apple’s counsel agreed.

22 7. Epic scheduled Mr. Ong’s deposition for February 22, 2021.

23 8. On February 22, 2021, counsel for Match Group and Mr. Ong informed
24 Epic and Apple that, due to the aforementioned family medical emergency, Mr. Ong was unable
25 to proceed with the deposition on February 22, 2021 and requested that the parties postpone
26 Mr. Ong’s deposition until February 24, 2021.

10. I do not believe that granting the Stipulation will result in changing any other dates or deadlines in this litigation or the related actions, other than the Court's Scheduling Order, and only with respect to the deposition of Mr. Ong.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration on February 22, 2021 in Westchester County, New York.

/s/ J. Wesley Earnhardt
J. Wesley Earnhardt